

U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. **200600693**

Issuance Date:

December 11, 2006

Stream: **Un Trib Jehu Branch**

Closing Date:

January 10, 2006

Please address all comments and inquiries to:

U.S. Army USACE of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Wolf Run Mining Company
2708 Cranberry Square
Morgantown, WV 26508

LOCATION: The proposed project area is located on the Eccles USGS quadrangle at latitude 37° 46'18" and longitude 81° 15'48" near Eccles, Raleigh County, West Virginia. The proposed project would result in impacts to an unnamed tributary to Jehu Branch. Jehu Branch is a tributary to Miller Camp Branch, a tributary to the Coal River, a navigable water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into 8,073 linear feet of waters of the U.S to construct the Bayhill Refuse Fill to facilitate the removal of coal from operations at the existing Bayhill Deep Mine and Preparation Plant (Surface Mining Control and Reclamation Act Permit U-3011-95). Initial site development for the project occurred pre-SMCRA. The Corps verified a Nationwide (NWP) 26 May 20 1997 to construct the refuse fill, however the fill was not initiated and the NWP expired February 11, 2002. Approximately 3.2 million cubic yards of fill material would be generated by room and pillar mining of the Pocahontas #3 seam.

An existing 0.43 acre pond, impounding approximately 330 linear feet of stream, is located at the toe of the proposed fill area and would require modification to support the refuse fill construction. Expansion of the existing pond would temporarily impact an additional 760 linear feet, totaling approximately 1,090 linear feet of temporary perennial stream impacts.

Construction of the Bayhill Refuse Fill would permanently impact approximately 6,400 linear feet of intermittent channel and 913 linear feet of ephemeral channel. Surface disturbance associated with the WVDEP Surface Mine Application (SMA), would authorize 103.9 acres, of which 49.65 acres were previously disturbed pre-SMCRA. The proposed mine refuse plan would be implemented over a period of 13 years.

Plans for the proposed facility are attached to this public notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant proposes to provide compensatory mitigation by restoring temporarily impacted channels on-site and has submitted a conceptual mitigation plan to restore off-site streams within the Coal River watershed.

The mitigation plan includes the reconstruction of 760 linear feet of perennial stream temporarily impacted by sediment pond construction. The stream would be restored to its approximate original contours and would be reconstructed using instream structures for habitat diversity and would include the establishment of vegetated buffers.

To compensate for the permanent loss of approximately 7,313 linear feet of intermittent and ephemeral stream, the applicant proposes to perform restoration and enhancement to a portion of Millers Camp Branch, a perennial stream. The mitigation site is approximately two miles from the proposed project and within the same watershed. The proposed mitigation consists of stream restoration adjacent to four pre-SMCRA coal refuse piles located along Millers Camp Branch. The four pre-SMCRA coal refuse piles would be removed by the applicant. This action would improve water quality by removing the refuse from the stream banks and adjacent areas. After the fills are removed, physical restoration of the stream channel would occur through in-stream habitat enhancement, bank stabilization and the establishment of a riparian corridor.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A field evaluation of the project site was performed by West Virginia Division of Culture and History (WVDC&H) staff (FR#: 96-98-RG). In a letter dated July 17, 1996 the WVDC&H indicated based on the field evaluation and Project Summary Report, it has been determined no known historical, architectural, or archaeological sites listed on or eligible for listing in the National Register of Historical Places would be affected by the project. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

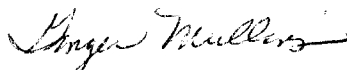
ENDANGERED/THREATENED SPECIES REVIEW: The proposed project occurs within the range of three federally listed species: Virginia spiraea (*Spiraea virginiana*), Indiana bat (*Myotis sodalis*) and the Virginia big-eared bat (*Corynorhinus townsendii virginianus*). The applicant has initiated coordination with the United States Fish and Wildlife Service. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the ESA Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest, which may be adversely affected, and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The

benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

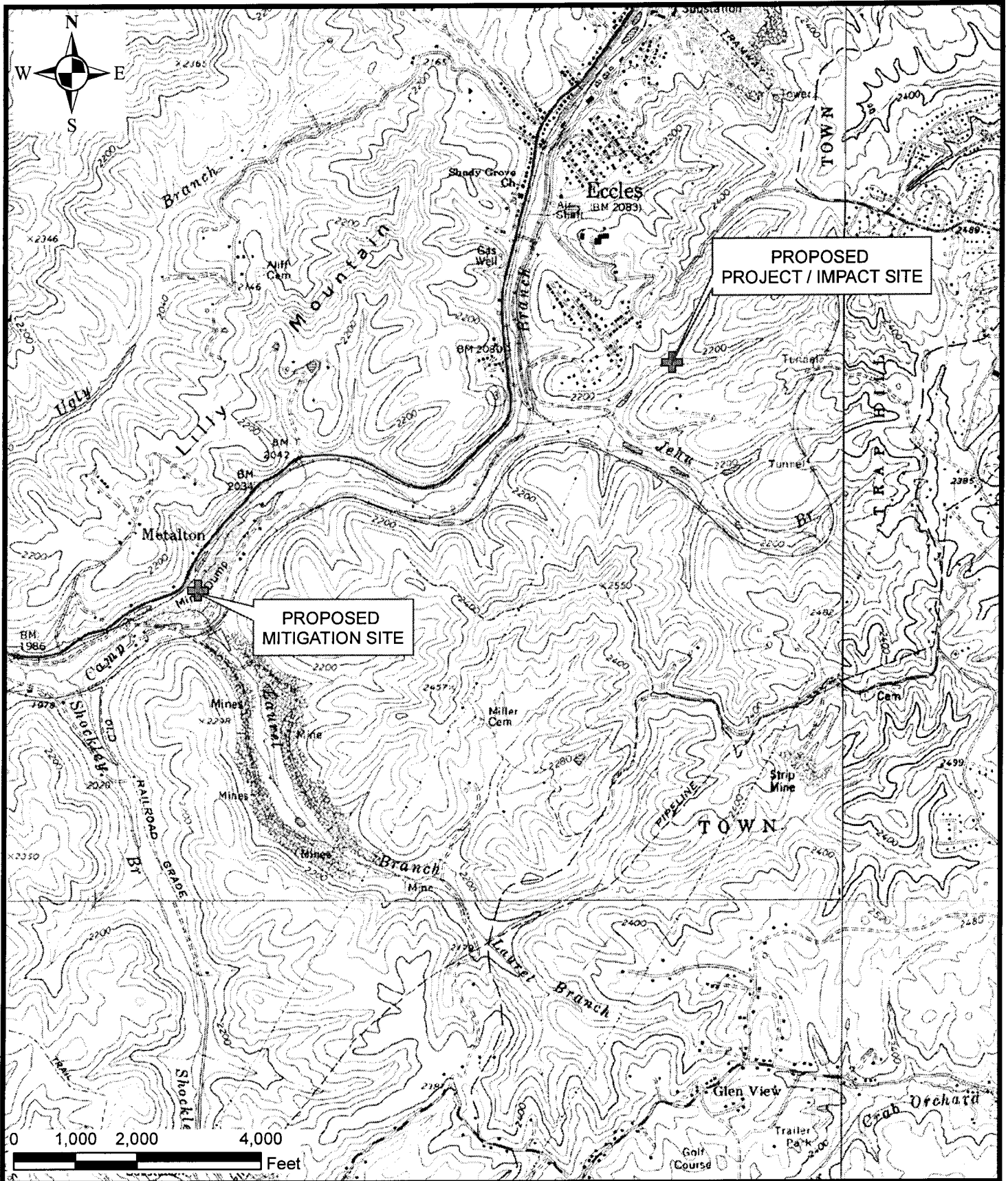
SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. Tammy Fudge, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070, by telephone at 304-399-5710 or by email at tammy.r.fudge@usace.army.mil. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.



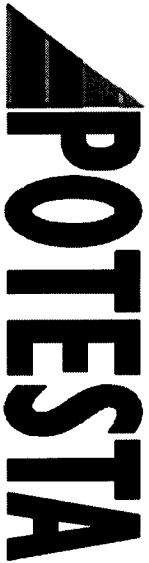
Ginger Mullins, Chief
Regulatory Branch

(W)



SCALE: 1" = 2000'
 DATE: AUGUST 2006
 PROJECT NO.: 0102-05-0152-002B
 DRAWN: RWR
 P:\Projects\2005\05-0152-002\Map Documents\
 SITE MAP PH002B.mxd

Title
 WOLF RUN MINING COMPANY, INC.
 BAYHILL REFUSE SITE
 RALEIGH COUNTY, WV
 1 of 5



Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS

125 Lakeview Drive, Morgantown, WV 26508
TEL: (304) 225-2245 FAX: (304) 225-2246
E-Mail Address: potesta@potesta.com

Project

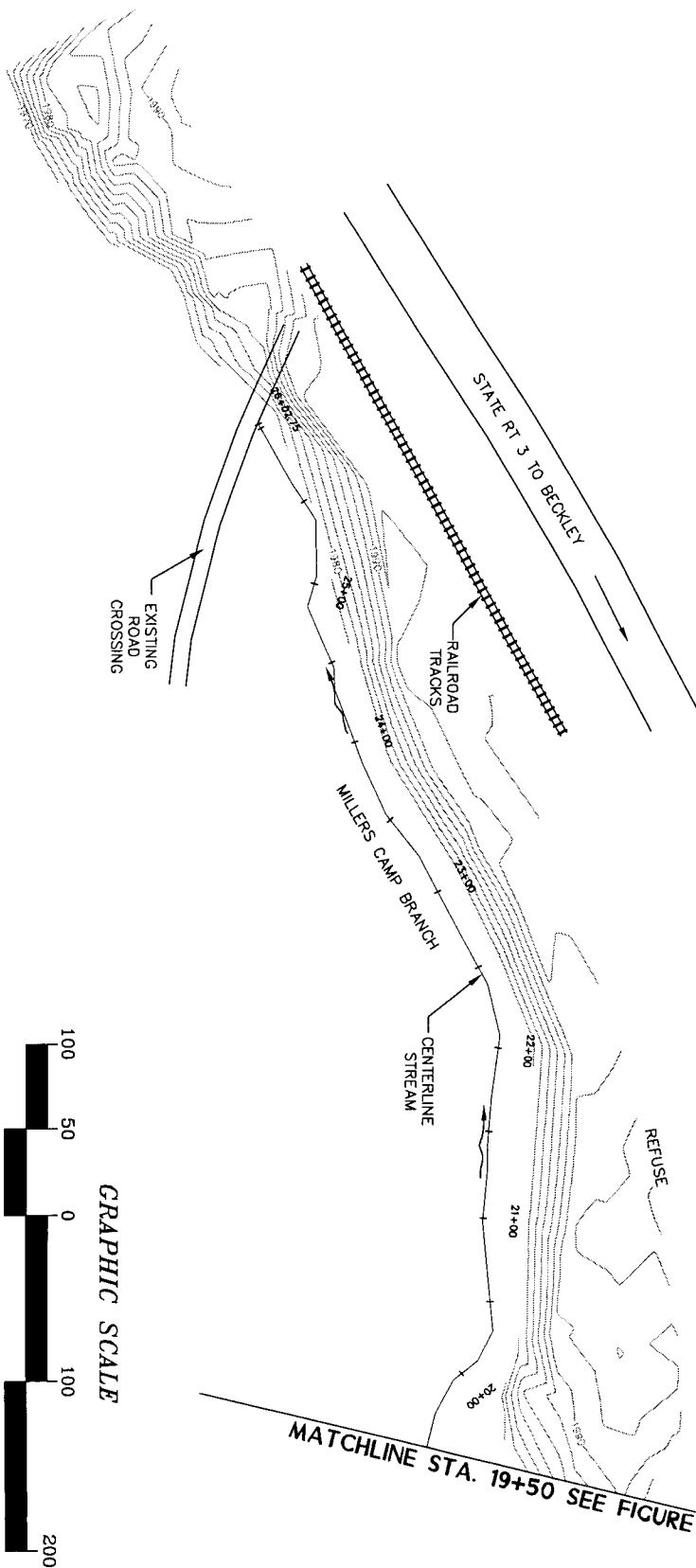
WOLF RUN MINING COMPANY, INC.
BAYHILL REFUSE MITIGATION
RALEIGH COUNTY, WV

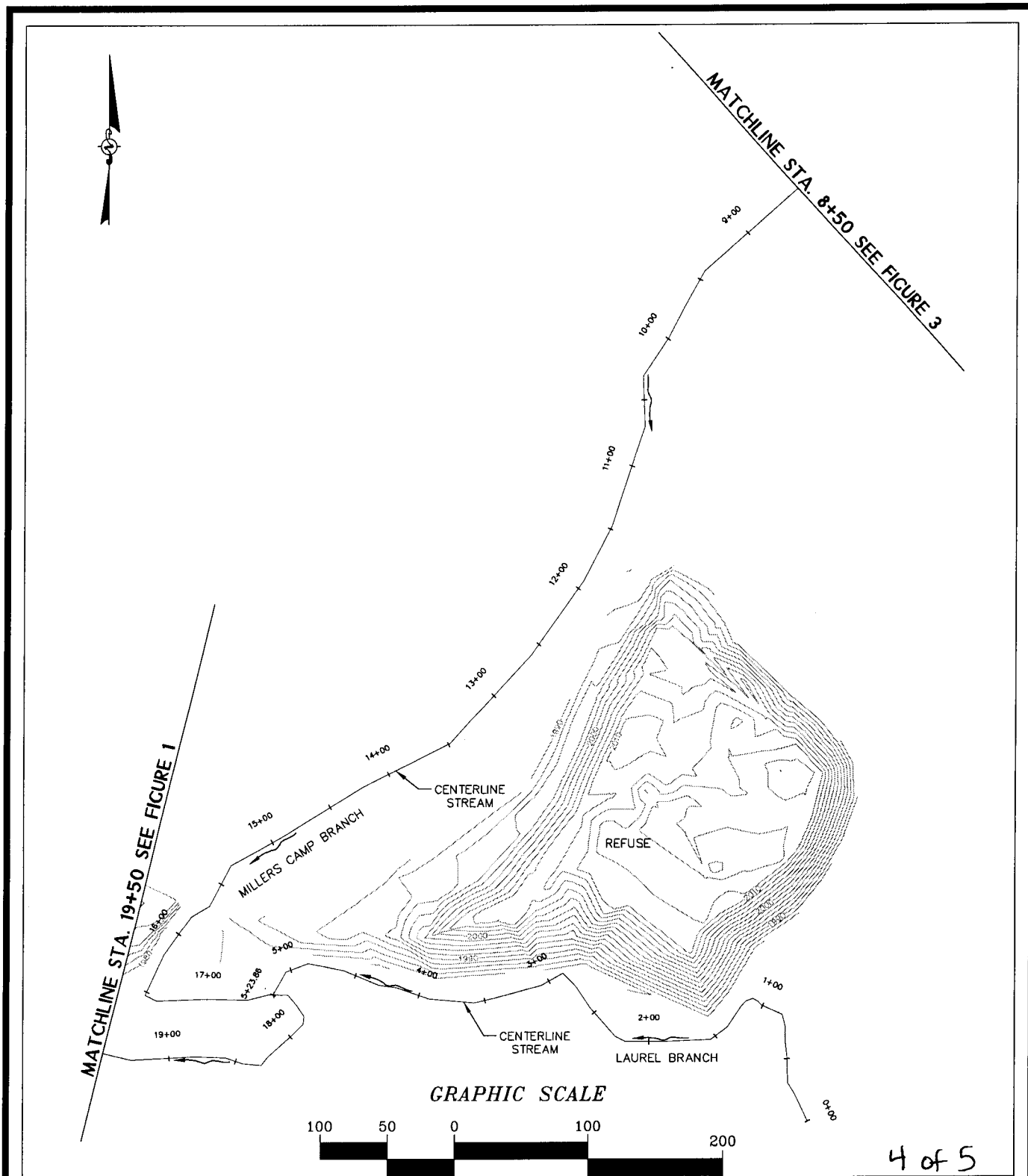
Scale NOTED

Date AUGUST 2006

Dwg. No.

FIGURE 1





Potesta & Associates, Inc.

ENGINEERS AND ENVIRONMENTAL CONSULTANTS

125 Lakeview Drive, Morgantown, WV 26508
 TEL: (304) 225-2245 FAX: (304) 225-2246
 E-Mail Address: potesta@potesta.com

Project

WOLF RUN MINING COMPANY, INC.
 BAYHILL REFUSE MITIGATION
 RALEIGH COUNTY, WV

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Dwg. No.

FIGURE 2



GRAPHIC SCALE



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FIGURE 3